



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,246	05/25/2001	Morton Gregory Swimmer	YOR920010310US1	3963

35526 7590 10/21/2004

DUKE. W. YEE  
YEE & ASSOCIATES, P.C.  
P.O. BOX 802333  
DALLAS, TX 75380

EXAMINER

ZAND, KAMBIZ

ART UNIT	PAPER NUMBER
----------	--------------

2132

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

04/3

**Office Action Summary**

Application No.

09/865,246

Applicant(s)

SWIMMER ET AL.

Examiner

Kambiz Zand

Art Unit

2132

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. **Claims 1-67** have been examined.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 1-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-67, the "journaling the data to form journaled data" phrases makes the claims indefinite and unclear in that neither means/method nor interrelationship of means are set forth in these claims in order to achieve the desired results expressed in the "journaling the data to form journaled data" phrases.

In claims 1-67, the "journaling the data to form journaled data" phrases makes the claims indefinite and unclear. Examiner considers the above phrase as monitoring data for the purpose of examination.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-67** are rejected under 35 U.S.C. 102(b) as being anticipated by Conklin et al (5,991,881 A).

As per claims 1-67 Conklin et al (5,991,881 A) teach monitoring the traffic data input, detection virus process and identification, analysis of the virus and discarding as disclosed in all independent claims (see abstract; fig.4 and 6-9; col.3, lines 36-67; col.4-7 and col.8, lines 1-24).

All dependent claims limitations also are addressed in detailed by Conklin where the pattern matching, actions based on the matching and other limitations are addresses (see the entire reference).

Examiner suggests applicant to define "journaling the data to form journaled data" if different from examiner interpretation in a manner to distinguishes from Conklin et al reference.

### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. US (5,485,575 A) teach automatic analysis of a computer virus structure and means of attachment to its host.

U.S. Patent No. US (5,832,208 A) teach anti-virus agent for use with databases and mail servers.

U.S. Patent No. US (5,473,769 A) teach method and apparatus for increasing the speed of the detection of computer viruses.

U.S. Patent No. US (5,978,917 A) teach detection and elimination of macro viruses.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Zand whose telephone number is (703) 306-4169. The examiner can normally be reached on Monday-Thursday (8:00-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (703) 305-1830. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Art Unit: 2132

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kambiz Zand

10/18/04